

Louisiana Department of Environmental Quality

**Petition to Deny the Part 70 Air Operating Permit Renewal and Minor
Modification by Entergy New Orleans for Failure to Meet the Requirements of
LAC 33:III.507.E.**

Monique Harden, Esq.
Deep South Center for Environmental Justice
9801 Lake Forest Blvd.
New Orleans, LA 70127
Counsel for the Deep South Center for Environmental Justice

Susan Stevens Miller, Esq.
Earthjustice
1625 Massachusetts Ave., N.W., Suite 702
Washington, DC 20036
Counsel for the Alliance for Affordable Energy

Dated: January 16, 2019

The Deep South Center for Environmental Justice and the Alliance for Affordable Energy (“Petitioners”) petition the Louisiana Department of Environmental Quality (“LDEQ”) to deny the pending application for the Part 70 Operating Permit Renewal and Minor Modification (“permit renewal application”) of Entergy New Orleans, Inc. (“Entergy” or “Company”). As explained below, Entergy’s original permit renewal application was prematurely filed and its subsequent permit renewal application was incomplete when filed. Entergy’s original and subsequent permit renewal applications each fail to meet the requirements of LAC 33:III.507.E.3-4.

Moreover, in order to take advantage of the LDEQ’s permit renewal provisions, Entergy was required to file a completed application six months prior to the Part 70 Operating Permit expiration date of December 11, 2018. Since Entergy failed to file a completed permit renewal application within the required timeframe, the Part 70 Operating Permit that Entergy sought to renew expired on December 11, 2018. Thus, the LDEQ does not have the authority to issue a renewal of the air permit to Entergy.

I. Background

On December 11, 2013, the LDEQ issued to Entergy an air permit authorizing the operation of the Michoud power plant in New Orleans, Louisiana.¹ This air permit is referred to as the Part 70 Operating Permit.² According to a provision in the air permit, “this authorization shall expire at midnight on the 11th of December, 2018, unless a timely and complete renewal application has been submitted six months prior to expiration.”³ This LDEQ provision applies the regulatory requirements set forth in LAC 33:III.507.E, which governs the duration, expiration and renewal of a Part 70 Operating Permit and was promulgated pursuant to the federal 40 CFR Part 70 General Condition A.

On March 15, 2016, Entergy submitted a permit renewal application to the LDEQ.⁴ Entergy’s application sought authorization for a Part 70 Operating Permit Renewal & Minor Modification as well as an Acid Rain Permit Renewal & Modification.⁵ In this application, Entergy states that it retired the Michoud power plant and planned to construct a new gas plant for the generation of electricity.⁶

Entergy submitted the permit renewal application more than two years prior to the December 11, 2018 expiration date of the then existing Part 70 Operating Permit. This early submittal is prohibited by state environmental regulations which provide that: “[i]n no event shall the application for permit renewal be submitted more than 18 months before the date of permit expiration.” LAC 33:III.507.E.4.

On January 11, 2017, the LDEQ issued a public notice of the draft permit renewals based on Entergy’s application.⁷ The LDEQ did not address the issue of Entergy’s premature filing of the permit renewal application.

¹ LDEQ Permit No. 2140-00014-V2, EDMS Doc. No. 9126602.

² *Id.*

³ *Id.*

⁴ Entergy New Orleans, Inc., Application for Renewal and Modification of the Part 70 Operating Permit, Acid Rain Permit, Mar. 2016, EDMS Doc. No. 10124402.

⁵ *Id.*

⁶ *Id.*, Section 1.1, *Facility Location and Description*.

⁷ LDEQ Public Notice, Jan. 11, 2017, permit nos. 2140-00014-V5 and 2140-00014-IV4.

On August 18, 2017, Entergy submitted an entirely new permit renewal application to the LDEQ, once again attempting to renew the Part 70 Operating Permit.⁸ This time, Entergy's application sought authorization for two alternative Part 70 Operating Permit Renewals & Minor Modifications and an Acid Rain Permit Renewal & Modification.⁹ In this application, Entergy proposes two alternative gas plants -- a combustion turbine gas plant or a gas plant comprised of seven reciprocating internal combustion engines -- for construction on the site of the retired Michoud power plant.¹⁰ Entergy acknowledges that it planned to construct only one of the gas plants.¹¹

On February 9, 2018, the LDEQ issued a public notice of the draft permit renewals for each of the two proposed gas plants based on Entergy's new application.¹² On March 22, 2018, Entergy notified the LDEQ of its decision to withdraw the proposed combustion turbine gas plant from the LDEQ's permit review, but did not amend the permit renewal application to reflect this change.¹³

On July 27, 2018, Entergy submitted substantial changes to its permit renewal application for the proposed gas plant consisting of seven reciprocal internal combustion engines. These substantial changes render Entergy's permit renewal application untimely because Entergy submitted the proposed changes less than six months prior to the December 11, 2018 expiration date of the then existing Part 70 Operating Permit.¹⁴

The significant changes made by Entergy demonstrate that its permit renewal application was not complete when it was submitted to the LDEQ in August 2017. The table below presents some of the extensive changes to the air pollution data that Entergy submitted in its revised permit renewal application, which include increased amounts of certain air pollutants and additional air pollutants not included in the original permit application. Notably, Entergy describes six different sections of its revised permit renewal application where it changed the air pollution data.¹⁵ Entergy attached 20 pages of documents to the letter that are revisions of the data presented in the previous permit renewal application.¹⁶

It is important to note that the changes to Entergy's permit renewal application were not made pursuant to a request by the LDEQ for additional information. Instead, as Entergy explains in the letter, the changes are based on information Entergy received from "recent vendor . . . and contractor reviews and communications."¹⁷

⁸ Entergy New Orleans, Inc., Application for Renewal and Modification of the Part 70 Operating Permit, Acid Rain Permit, Aug. 2017, EDMS Doc. No. 10761708.

⁹ *Id.*

¹⁰ *Id.*, Section 1.0, *Introduction*.

¹¹ *Id.*

¹² LDEQ Public Notice, Feb. 9, 2018, permit nos. 2140-00014-V5B or 2140-00014-V5A and 2140-00014-IV4.

¹³ Letter from R. Renee Keys, Entergy Services, Inc. to LDEQ Assistant Secretary Elliot Vega, Mar. 22, 2018, EDMS Doc. No. 11040329.

¹⁴ Letter from R. Renee Keys, Entergy Services, Inc. to LDEQ Assistant Secretary Elliot Vega, July 27, 2018, EDMS Doc. No. 11246227.

¹⁵ *Id.*, pp. 1 - 2.

¹⁶ *Id.*, pp. 4 - 23.

¹⁷ *Id.*, p. 1.

Changes to Entergy Permit Application on Section 12. Proposed Project Emissions			
Changed Air Pollution Data in Entergy Permit Renewal Application (July 27, 2018)		Prior Air Pollution Data in Entergy Permit Renewal Application (August 18, 2017)	
Pollutant	Emission (tons/year)	Pollutant	Emission (tons/year)
1,1-Dichloroethane	0.01	1,1-Dichloroethane	< 0.01
1,2-Dibromoethane (Ethylene dibromide)	0.03	1,2-Dibromoethane (Ethylene dibromide)	< 0.01
1,2-Dichloroethane	0.01	1,2-Dichloroethane	< 0.01
1,2-Dichloropropane	0.02	1,2-Dichloropropane	< 0.01
Additional Pollutant	Additional Emission (tons/year)		
Ammonia	8.61	No data	No data
Chloroethane	< 0.01	No data	No data
Dichloromethane (Methylene chloride)	0.01	No data	No data
Tetrachloroethane	< 0.01	No data	No data

Sources: Entergy's letter to LDEQ, detailing changes to its Part 70 Operating Permit Renewal and Minor Modification, Section 12. Proposed Project Emissions, July 27, 2018 (EDMS Doc. No. 11246227). Entergy's Part 70 Operating Permit Renewal and Minor Modification, Section 12. Proposed Project Emissions, August 18, 2017 (EDMS Doc. No. 10761708).

On August 30, 2018, the LDEQ issued a public notice on Entergy's revised permit renewal application that incorporated the extensive changes to air pollution data submitted by Entergy on July 27, 2018.¹⁸ The LDEQ did not address the issue of Entergy's failure to submit a permit renewal application that complied with the requirements of LAC 33:III.507.E.3-4.

II. The LDEQ Does Not Have the Authority to Issue a Part 70 Operating Permit Renewal and Minor Modification to Entergy Because Its Renewal Application Fails to Meet the Requirements of LAC 33:III.507.E.3-4

The Louisiana Administrative Code sets forth that a Part 70 Operating Permit "shall expire at the end of the effective duration," unless it is renewed in accordance with specific requirements. LAC 33:III.507.E.3. The requirements include that "a timely and complete renewal application has been submitted . . . at least six months prior to the date of the permit expiration." LAC 33:III.507.E.3-4.

¹⁸ LDEQ Public Notice, Aug. 30, 2018, permit no. 2140-00014-V5B.

In this case, the LDEQ issued Entergy a Part 70 Operating Permit with an expiration date of December 11, 2018. Entergy did not complete the application for the renewal of this air permit until July 27, 2018, which is untimely – less than six months prior to the permit expiration date – as Entergy did not file the completed application with the LDEQ until the regulatory deadline for a permit renewal application established by LAC 33:III.507.E.4 had passed. Therefore, the Part 70 Operating Permit has expired and no permit renewal can be issued by the LDEQ to Entergy.

Moreover, as set forth in LAC 33:III.507.E.3, the expiration of the Part 70 Operating Permit terminates Entergy's right to operate any Part 70 source(s) on the Michoud site in New Orleans, Louisiana.

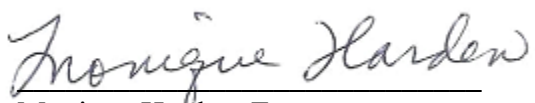
III. Conclusion

In contravention of LAC 33:III.507.E, Entergy failed to submit a timely and complete application for the renewal of the Part 70 Operating Permit at least six months prior the permit expiration on December 11, 2018. Therefore, the LDEQ does not have the authority to issue any renewal of the Part 70 Operating Permit to Entergy.

The LDEQ is respectfully requested to:

- (1) find that the Part 70 Operating Permit issued for the Entergy Michoud power plant (permit no. Permit No. 2140-00014-V2) has expired;
- (2) deny the application by Entergy for a Part 70 Operating Permit Renewal and Minor Modification; and
- (3) terminate efforts to finalize draft permit no. 2140-00014-V5B for the proposed Entergy gas plant consisting of seven reciprocating internal combustion engines.

Respectfully submitted,



Monique Harden, Esq.
Deep South Center for Environmental Justice
9801 Lake Forest Blvd.
New Orleans, LA 70127
Counsel for the Deep South Center for Environmental Justice

/s/ Susan Stevens Miller
Susan Stevens Miller, Esq.
Earthjustice
1625 Massachusetts Ave., N.W., Suite 702
Washington, DC 20036
Counsel for the Alliance for Affordable Energy